

Catalogue of French statutory and regulatory measures applicable to the marketing of shares or units of foreign UCITS in France

This document has been prepared pursuant to Article 91(3) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 (the “UCITS IV directive”)¹. It sets out France’s main financial law provisions stemming from the Monetary and Financial Code, the General Regulation of the Autorité des Marchés Financiers (AMF), and the AMF’s instructions, positions and recommendations applicable to the marketing in France of share or units of foreign undertakings for collective investments in transferable securities (UCITS) as authorised in accordance with the UCITS IV directive. However, it does not refer to the provisions already covered by UCITS IV (e.g. rules governing publication of the prospectus or the Key Investor Information Document, which are already provided for in the directive), particularly where a UCITS is subject to the rules of its home country. Neither does this document refer to other applicable provisions arising, for example, from contract law or consumer law. The fact that this document does not deal with the marketing of other collective investment undertakings does not mean that there is no legal framework in this area. In other words, distributors must comply with all relevant provisions, regardless of the type of undertaking they are marketing.

Marketing UCITS shares or units, as with any financial instrument, is defined as their “presentation through different means (advertising, direct marketing, [...] advice, etc.) by an investment services provider², a financial investment adviser or a direct marketer of banking or financial services³ with a view to encouraging a client to buy [them].

[It] does not concern the sale of financial instruments:

- in response to a client’s unsolicited request to purchase a specifically designated financial instrument, where allowed by the laws and regulations in force;
- under the terms of a portfolio management agreement, where the service is provided to the investment services provider, as long as the financial instruments in question are admissible for a [...] client’s portfolio”⁴.

Distributors of UCITS units or shares are responsible for determining, under the supervision of the competent authorities and courts, whether they are actually engaged in marketing activities in France.

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¹ Article 91(3) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) states: “Member States shall ensure that complete information on the laws, regulations and administrative provisions which do not fall within the field governed by this Directive and which are specifically relevant to the arrangements made for the marketing of units of UCITS, established in another Member State within their territories, is easily accessible from a distance and by electronic means. Member States shall ensure that that information is available in a language customary in the sphere of international finance, is provided in a clear and unambiguous manner and is kept up to date”.

² “Or through a tied agent, as the case may be. The tied agent must comply with the laws and regulations applying to the investment services provider” (Article L. 545-4, Monetary and Financial Code)

³ “For products subject to direct marketing”.

⁴ AMF Position 2010-05 of 15 October 2010: Marketing of complex financial instruments

1. Relations between foreign UCITS and the AMF

Notification procedure for marketing foreign UCITS in France

Statutory provisions

Article L. 214-1 II(2), Monetary and Financial Code

Instruction

[Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and periodic disclosures of French and foreign UCITS marketed in France - Article 36](#)

Rule overview: Any UCITS formed under foreign law and authorised in accordance with the UCITS IV directive must be notified to the AMF by the competent authority of the fund's home state before it can market its shares or units in France.

The notification file for marketing a UCITS or UCITS sub-fund in France includes:

1. the notification letter containing information about the proposed arrangements for marketing the shares or units in France, including details of each category of units or shares, where such is the case;
2. the fund rules or constitutive instruments;
3. the prospectus and, where they exist, the latest annual report and any subsequent half-yearly report;
4. the attestation from the supervisory authority;
5. the Key Investor Information Document (KIID), translated into French;
6. proof that the AMF filing fee has been paid.

The notification file is emailed directly to AMF by the competent authority of the fund's home member state.

The AMF acknowledges receipt of the file when it arrives. If the file is incomplete, the AMF contacts the competent authority of the fund's home state.

The competent home authority is informed within five business days that the full file has been taken into consideration.

Regarding the notification letter sent to the AMF concerning the marketing of the fund or sub-fund in France, no information other than that stipulated in Annex 1 of European Regulation 584/2010 of 1 July 2010 is required, apart from proof of payment of the AMF's fee in accordance with Article L. 621-5-3 of the Monetary and Financial Code.

Appointment of a centralising correspondent for UCITS authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 and set up under foreign law

Regulatory provisions

Article 411-135, AMF General Regulation

Article 1 of the Order of 6 September 1989 pursuant to Act 88-1201 of 23 December 1988 on collective investment undertakings and relating to the formation of securitisation common funds

Instruction

[Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and periodic disclosures of French and foreign UCITS marketed in France - Article 38](#)

Rule overview: A foreign UCITS marketed in France has to appoint a centralising correspondent, in accordance with the above provisions.

In particular, pursuant to Article 411-135 of the AMF General Regulation, the centralising correspondent and any other correspondents, which must belong to one of the categories referred to in Article 1 of the Order of 6 September 1989, are contractually bound to provide the following financial services:

1. processing subscription and redemption requests;
2. making coupon and dividend payments;
3. supplying information documents to investors;



4. providing shareholders/unitholders with special information in the cases provided for in the above instruction.

Where the UCITS is not accepted by the central depository in France, the centralising correspondent may be responsible only for the service referred to in item 3, in which case it must ensure that services 1, 2 and 4 are properly carried out.

The centralising correspondent is responsible for paying the annual set fee, in accordance with Article L. 621-5-3 of the Monetary and Financial Code.

Fees payable to the AMF

Statutory provisions

Article L. 621-5-3 I 4°, Monetary and Financial Code

Regulatory provisions

Article D. 621-27 4, Monetary and Financial Code

Article 411-135, AMF General Regulation

Rule overview: Foreign UCITS are subject to a set fee, as provided in the above provisions. The UCITS' centralising correspondent is responsible for paying the fee to the AMF. The amount is 2,000 euros per sub-fund or per UCITS with no sub-funds. The fee is payable on the day the authorisation application is filed with the AMF and on 30 April of each subsequent year.

Sending information to the AMF

Instruction

Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and periodic disclosures of French and foreign UCITS marketed in France - Article 39

Rule overview: When a foreign UCITS is marketed in France, it must send the information referred to in the above instruction to the AMF, i.e. the annual and half-yearly reports, changes affecting the fund and amendments to its Key Investor Information Document and prospectus, and post-filing changes to the UCITS that will affect its marketing in France. This information is emailed to the AMF at europeanopcvn@amf-france.org.

2. Soliciting, establishing a relationship with and informing investors

General provision on investor solicitation

Regulatory provisions

Article 411-131, AMF General Regulation

Rule overview: In accordance with this article of the AMF General Regulation, soliciting the public to invest in foreign UCITS is subject to the same provisions as those applicable to French UCITS.

Direct marketing of banking or financial products and services

Statutory provisions

Articles L. 341-1 to L. 341-16, Monetary and Financial Code

Regulatory provisions

Articles D. 341-1 to R. 341-16, Monetary and Financial Code

Rule overview: Direct marketing of financial products or services is an active selling method regulated under the Monetary and Financial Code. This regime applies whenever banking or financial products and services are marketed directly in France, including where only the person solicited is based in France. There are, however, some exceptions, notably where the persons contacted are qualified investors.

Advertisements: content and dissemination of advertisements

Provisions applicable to all distributors

Regulatory provisions

Articles 314-30, 411-126 and 411-132, AMF General Regulation

Instruction

[Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and periodic disclosures of French and foreign UCITS marketed in France - Article 37 \(for foreign UCITS\)](#)

AMF position-recommendation

[AMF position-recommendation 2011-24: Best practice guide to preparing sales and marketing materials for collective investment schemes](#)

Specific provisions for investment services providers authorised in France or operating under the right of establishment

Statutory provisions

Article L. 533-12, Monetary and Financial Code

Regulatory provisions

Articles 314-10 to 314-31, AMF General Regulation

Rule overview: UCITS advertisements intended for investors are subject to some formal requirements. In particular, they must be clearly identifiable as advertisements, be accurate, clear and not misleading (otherwise, the AMF may order the presentation or content to be modified) and mention the existence of the prospectus and the availability of the Key Investor Information Document. Advertisements must also comply with the requirements of the aforementioned provisions.

Information about investor compensation

Statutory provisions

Articles L. 322-1 to L. 322-10 and L. 533-23, Monetary and Financial Code

Rule overview: Before entering into a business relationship with clients, an investment services provider authorised in France or operating under the right of establishment must inform them that an investor compensation scheme applies to the envisaged investment(s); it must also inform them about the amount and extent of the indemnity and, where appropriate, the identity of the scheme.

Distance marketing of consumer financial services

Statutory provisions

Articles L. 343-1 and L. 343-2 of the Monetary and Financial Code

Rule overview: These provisions result from implementation of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services.

Language used in information documents

Regulatory provisions

Articles 411-105 III and 411-129 III, AMF General Regulation

Instruction

[Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and periodic disclosures of French and foreign UCITS marketed in France - Article 40](#)

Rule overview: In accordance with Article 411-105 III of the AMF General Regulation, the Key Investor Information Document of a foreign UCITS marketed in France must be in French.

Further, under Article 411-129 III *ibid*, any person that markets in France the shares or units of a UCITS whose articles, rules or any other investor information document is written in a language customary in the sphere of finance other than French must focus its marketing effort in particular on investors categorised as professional clients, detailed in Article D. 533-11 of the Monetary and Financial Code. The person must also ensure that the investor is able to understand the language used.

Information available to the public in France

Instruction

[Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and periodic disclosures of French and foreign UCITS marketed in France - Article 40](#)

Rule overview: UCITS must provide the public with the French version of the Key Investor Information Document and also ensure that compulsory investor information is available on the premises of the institutions authorised to take subscription and redemption orders.

SICAVs must publish a notice in the official gazette (BALO) specifying the nationality of the fund, the date of the AMF marketing authorisation, the date of opening to French investors, the name and registered office of the depositary, the list of sub-funds concerned by the authorisation in the case of an umbrella fund, and the contact details of the centralising correspondent in France. An additional notice amending the initial notice must be published whenever a new sub-fund is authorised for marketing.

Foreign management companies are required to inform shareholders or unitholders under the same conditions as those imposed by the domestic law of the country in which the UCITS is marketed.

Informing investors after they have made an investment

See point 6: Monitoring investor relations

3. Providing investment services when marketing shares or units of foreign UCITS

Supply of investment services by an investment services provider authorised in France or operating under the right of establishment when marketing shares or units of foreign UCITS

Statutory provisions

Article L. 321-1, Monetary and Financial Code

Articles L. 533-11 to L. 533-13 and L. 533-14 to L. 533-20, Monetary and Financial Code

Regulatory provisions

Article D. 321-1, Monetary and Financial Code

Articles R. 533-11 to R. 533-14, Monetary and Financial Code

Articles 314-1 *et seq* (excluding provisions relating to portfolio management services and management of collective investment schemes) and 411-129, AMF General Regulation

AMF instruction, positions and recommendations

[AMF instruction 2008-04 of 15 July 2008 on conduct of business rules when asset management companies market shares or units in collective investment schemes and real estate collective investment schemes](#)

[Q&A on practical aspects of MiFID implementing legislation \(9/04/2009\)](#)

Rule overview: The AMF has noted that when shares or units in collective investment schemes, or any other financial instrument, are marketed, the distributor generally provides at least one investment service, such as investment advice or order reception/transmission for third parties.

Accordingly investment services providers authorised in France or operating under the right of establishment, together with their tied agents if they have any, are required to comply with French conduct of business rules governing the supply of the investment service(s) concerned, notwithstanding the rules originating from Directive 2009/65/EC and Directive 2010/43/EU⁵, where applicable.

Use of a tied agent⁶

Rule overview: See the above measures applicable to investment services providers

⁵ Foreign investment services providers operating in France under the freedom to provide services are subject to the conduct of business rules of their home state.

⁶ Within the meaning of Article 4(1)(25) of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments (MiFID). The regime applicable to tied agents is set forth in Articles L. 545-1 *et seq* of the Monetary and Financial Code.

Use of a financial investment advisor⁷

Statutory provisions

Articles L. 541-8-1 and L. 541-9, Monetary and Financial Code

Regulatory provisions

Articles 325-3 to 325-9 and 325-13, AMF General Regulation

AMF position

[AMF position: Q&A on the regime applicable to financial investment advisors](#) (22/09/2006)

Rule overview: A financial investment advisor may provide an investment advice service and receive a client's order for transmission purposes if, and only if, that order concerns one or more shares or units of collective investment schemes (listed exhaustively in Article L. 214-1 of the Monetary and Financial Code, i.e. "undertakings for collective investment in transferable securities, securitisation funds, real-property investment partnerships, forestry-linked savings companies, real-property collective investment undertakings" and fixed capital investment companies) for which the financial investment advisor has previously provided an investment advice service to the same client.

4. Remuneration of UCITS distributors

Rebates of management fees or subscription/redemption fees

Regulatory provisions

Articles 411-129-1, 411-130 and 411-132, AMF General Regulation

Rule overview: Rebates of management fees or subscription/redemption fees are prohibited or regulated in accordance with the aforementioned provisions of the AMF General Regulation.

5. Specific provisions for some collective investment schemes

Marketing shares or units in complex collective investment schemes⁸

AMF position

[AMF position 2010-05 of 15 October 2010: Marketing of complex financial instruments](#)

Rule overview: In particular this position reminds distributors of their obligations when choosing products to market to retail investors. It stresses that distributors sometimes do not meet their professional obligations when marketing particularly complex products covered specifically by the AMF position. The latter products are subject to "enhanced vigilance".

⁷ Within the meaning of Article L. 541-1 of the Monetary and Financial Code.

⁸ Note that the term "complex" should not be construed within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (MiFID).

Admission to trading on a regulated market of shares or units in a collective investment scheme with an index-based investment objective

Regulatory provisions

Article D. 214-22-1, Monetary and Financial Code
Articles 411-133 and 411-134, AMF General Regulation

Rule overview: A collective investment scheme with an index-based investment objective whose shares or units are admitted to trading on a regulated market must comply with the above provisions of the Monetary and Financial Code and the AMF General Regulation.

Collective investment schemes with categories of units or shares reserved for a specific investor category

Regulatory provisions

Articles 411-22 and 411-129 II, AMF General Regulation

Rule overview: If a collective investment scheme or the sub-fund of a collective investment scheme has categories of units or shares reserved for a specific category of investor, as defined in the prospectus, the distributor must ensure that the investor fulfils the subscription requirements.

6. Monitoring investor relations

Informing investors after they have made an investment

Instruction

[Instruction 2011-19 on authorisation procedures, preparation of a KIID and a prospectus, and periodic disclosures of French and foreign UCITS marketed in France - Articles 18 to 23, 40 and annex XII](#)

Rule overview: Certain changes that may occur during the life of a UCITS or a UCITS sub-fund must be brought to the attention of shareholders or unitholders. These changes and the arrangements for informing investors about them are described in the above instruction.